

# THE MARTHA'S VINEYARD COMMISSION

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MINUTES OF FEBRUARY 2, 1989

## MARTHA'S VINEYARD COMMISSION MEETING

The Martha's Vineyard Commission held a public hearing on Thursday, February 2, 1989 at 8:00 p.m. at the Oak Bluffs School Gymnasium, Oak Bluffs, MA pursuant to Section 8 of Chapter 831, Acts of 1977, as Amended, and Massachusetts General Law, Chapter 30A, Section 2, and the Standards and Criteria regarding designation of a District of Critical Planning Concern adopted by the Commission and approved on September 8, 1975 by the Secretary of Communities and Development, to hear testimony and receive evidence as to whether the Commission should designate specific geographic areas of the land and waters of Martha's Vineyard as described below in the boundaries as a District of Critical Planning Concern.

### Area Accepted for Consideration of Designation:

All land in the Town of Oak Bluffs beginning at the southeasterly bound of Lot 31, Map 50, thence northerly for 1049.1 feet to center line of trail known as Old County Road, then easterly along said center line of trail for 1,097 feet, westerly for 297 feet, along southwestern bound of Oak Bluffs Case File 196, thence northerly for 804 +/- feet, thence easterly along the most southern bound of Lot 1, Map 42 to the center line of County Road, thence northerly along center line of said road to eastern extension of property bound of Lot 1, Map 42, thence westerly along the most northern bound of Lot 1, Map 42, thence southerly for 59 feet, thence continuing westerly for 2,598 feet, thence southwesterly for 729.4 feet, thence westerly for 213 feet, thence southerly for 900.5 feet, thence continuing in a southeastern direction for 888.1 feet, thence southwesterly for 2,221.9 feet to center line of trail known as Old County Road, thence westerly along center line of said trail for 495 feet to north eastern bound of subdivision known as Old School House Village, thence southerly along eastern bound of said subdivision for 860 feet to the right-of-way of Vineyard Haven-Edgartown Road, thence easterly along said right-of-way for 1,910 +/- feet to the point of origin.

The above area references assessor map and lot numbers from the Town of Oak Bluffs.

A copy of the Commission's vote for consideration and all other information relating thereto are on file and may be examined at the offices of the Commission. Written testimony may be submitted prior to or during the hearing.

John Early, Chairman, read the Public Hearing Notice, opened the hearing for testimony, described the order of the presentations for the hearing, and introduced Greg Saxe, MVC Staff, to make his presentation.

Mr. Saxe reviewed staff notes (copies are available in the DCPC and Meeting files), referring to wall maps during the presentation. The staff notes address the following: DCPC Nominators; History; Location; Access; Purpose; Types of District, "Economic or Development Resource District", "Major Public Investment District"; Zoning; Ownership; Topography; Soils; Vegetation; and Surrounding Land Uses; including a list of the business shown. He stated that nearly 50% of the homes shown have been constructed since 1986. Mr. Saxe then answered questions from the Commissioners.

Mr. Ewing, Commissioner, asked how much of this land in unclear title? Mr. Saxe responded he didn't know the actual figure, probably 2/3 has unclear title at this time.

Ms. Colebrook, Commissioner, inquired about the 90 acres Brine Woodlot, is this included? Mr. Saxe responded yes, it is at the eastern edge, against County Road. Ms. Colebrook questioned our ability to take this land. Mr. Saxe stated that is not a consideration in the DCPC nomination process. Within a DCPC there are often multiple owners and the regulations are enforced across the board. The taking of the land is a separate issue.

When there were no further questions for Mr. Saxe from the Commissioners Mr. Early moved to town board comments and read the a letter dated 2/1/89 from the Oak Bluffs Board of Selectmen to the M.V.C. as follows: At the January 31, 1989 meeting of the Board of Selectmen, the Board voted unanimously to endorse the attached draft Goals and Concerns for the Proposed Multi-Use DCPC. At this stage in the planning process, the Board are in agreement that the Committee's proposals adequately reflect the needs of the Town. Signed by George G. Martin, Jesse B. Law III, Roger W. Wey. The Oak Bluffs Planning Board have also reviewed the attached draft Goals and Concerns, and would like to add their endorsement, in concurrence with the Board of Selectman. This endorsement was signed by Timothy D. Sweet, Chairman, Oak Bluffs Planning Board. The Goals and Concerns (available in their entirety in the DCPC and Meeting files) are summarized as follows: Goal: To investigate the feasibility and environmental and financial effects on rezoning the proposed DCPC to a multipurpose commercial land use area. To create a new business zone to meet needs not currently met by the existing business zone. Concerns: Identify not only what types of business would be needed and well located but also what would be a good mix and complement each other. Guard against the area becoming a catchall for every need or problem that the town or Island faces. Protect the viability of the existing downtown business zone. Thoroughly investigate the appropriateness of this DCPS for municipal needs. Formulations of very rigid controls for any development. Examine the total present and future needs of Oak Bluffs and determine the actual amount of area that needs to be developed or reserved for Oak Bluffs and the effects on traffic and buffers need to

protect the surrounding area. Explore all sources of grants to hire professionals to assist in the planning of this area. Study long-term financial impact on the town of such a project showing probable income, expenses and taxes with various options of management and ownership that could be available to develop this area.

Mr. Early then called on members of town board present to give testimony.

Mr. Martin, Oak Bluffs Board of Selectmen, stated that this 300+ acres is the last lot of any size left in Oak Bluffs. There are approximately 4,500 developed residential housing units and according to Oak Bluffs' records another 4,000 undeveloped housing lots. If those lots are developed there is no way, presently, we could handle even the water supply. Businesses are already encroaching on the residential areas. We felt that it is critical to the planning of this community to be able to put this area aside and take a good hard look at it to decide what is the best we can do for the Town of Oak Bluffs. We are a little over one hundred years old and many of the problems we have is because adequate long range planning hasn't been done in the past. We hope that this will give us time to do the right kind of work and studies so that we can best protect future interest of this Town.

When there were no other members of town boards, Mr. Early called on members of the public to present testimony.

Mr. Benjamin Harrison, stated he believes this area is presently under moratorium and being studied in relation to the effect of development and septage to Lagoon Pond. Is that so? If so why is it necessary to have a 2nd DCPC? In talking about putting a lot of industry and so on in this area I believe this area is zoned residential with a 3 acre lot size. With 300 acres you have a maximum of 100 new homes. This area can readily accept the septage for 100 homes but not the septage and industrial waste for an area of this size.

Mr. Jason, Commissioner, responded that this area is not under a moratorium. It is zoned R-60 which is not a 3 acre lot size.

Ms. Linda Marinelli, public, stated it is adjacent to the Lagoon Pond DCPC.

Mr. Early, Chairman, stated that is correct, but it is not under moratorium at this time.

Ms. Marinelli then read a letter of testimony which she later submitted for the record (copies are available in entirety in the DCPC and Meeting files). Her testimony is summarized as follows: Much of the land nominated has some serious questions that must be answered prior to any definite decisions being made, such as the 80+ acres of conservation land and large parts of the remaining tract that a resident of Oak Bluffs is claiming ownership to. Both boards have proposed a planned development district that would accommodate many uses, which she listed. The petitioners state that the area is

important to more than one town and that from a regional standpoint this district includes areas that could contain future major public investment areas that could serve residents of more than one town. The Town of Oak Bluffs is not the only town that is experiencing severe hardships due to the constraints of proposition 2 1/2. Certainly everyone will agree that Oak Bluffs has been extremely generous in donating land and allowing many regional non-profit businesses to locate in the Town of Oak Bluffs. She listed many examples and their regional benefits. Let no one say that we have not lead the way, or that we have not been generous during the good years and welcome everyone with open arms. Now we have come upon hard times and the State has mandated a sewage treatment plant, transfer station, and regional land fill. The time has come for the outreaching Towns to offer a helping hand and offer some of their land to help the down-Island towns. It is impossible for anyone to expect one or two towns to continue to carry the burden of making land available so that services can be made available for Island-wide use. I feel that West Tisbury could also take land by eminent domain for these purposes and I believe that our taxpayers would be delighted to raise money to help. I also feel that even though it would cost us money to transport materials up-Island, I for one would support this move. I do not feel, or believe that the extensive plans being proposed for this area as it has been nominated will generate the kind of money that has been projected and as a result of my feelings I would like to offer alternatives. I call upon the Oak Bluffs Board of Selectmen to place on the All-Island Board of Selectmen agenda the question to begin the process to regionalize all town governments into one. To continue to duplicate services is insane and a waste, and certainly is a sign of poor management. There is no logical reason why such a small Island should be run by six different bodies of government. If we regionalize our government and have a representative form of government and stop the duplication of departments and services we could afford to do much more. So, I guess what I am trying to say is if we begin the process at the All-Island Selectmen's meeting I would support this plan. If we do not, and we expect Oak Bluffs to take on yet another tax free plan to serve the whole Island, and not regionalize, then I would be opposed.

Ron Mechur, representing the Meadow View Farms Property Owners Associations, which is a direct abutter to this proposal. The Meadow View project was approved 6 or 7 years ago by this Commission as a Development of Regional Impact. It includes 77 house lots, about half of the project has been developed out, as the staff member pointed out most of the development has been within the past 2-3 years. The Board of Directors of this particular association met about a month ago to discuss this proposal and they have two requests. One is that the 91 acres more or less of the so-called Brine Woodlot property be deleted from the boundaries from further consideration in the designation process. That would make sense for a number of reasons. One reason being that some of these owners had title work done when they acquired their particular parcels, some of them abut almost directly, there is a small piece of common land that divides the house lots from the Brine parcel. When the title work was done the individuals were assured that when they constructed their homes they would be abutting

property that was given for conservation purposes. They think that the safest thing to do would be to keep that intact and delete it from the proposal. It also would make drafting the future regulations much easier otherwise we would need to be citing exceptions constantly to otherwise permitted uses on the remaining land, the whole intensification process of the uses described and some of the possibilities from the septage handling facility to commercial uses. Now if those uses really aren't permitted today on the Brine parcel because of conservation procedures, I assume they certainly won't be permitted in the future. So the safest thing to do would be to take it out. The second request was that in the guidelines, when they are issued, that there be a 100' no cut no build buffer along the residential borders of this property and I feel that in a sense of good will it should include other residential developments as well. To some extent the others thought they were acquiring parcels that were R-60 zoning, if we are going to intensify land use there ought to be a greater buffer than is presently provided in the zoning by-law.

Salena Roman, resident of the Meshachaket Grove Subdivision, stated that the point she is most concerned with and that a few of my neighbors are most concerned with is the actual criteria as to why this is being considered as a possible DCPC. There has been a lot of mention of senior citizens housing, civic organizations, municipal uses of property. I think the point that really needs to be looked and considered by anyone else testifying or providing written testimony in the future is the direct use, or the possibility of other town usage or Island usage, for the acreage. In very much the vein of thought Ms. Marinelli had in regards to Oak Bluffs taking it one more time. From what little I do understand about the Regional Refuse District if we are going to propose that this kind of thing be reviewed for Oak Bluffs usage for septage treatment for packaging, what happened to participating in the Refuge District. If we are doing this on the basis that it be considered with the forethought that it be done on a regionalized basis for that septage issues, then that needs to be made clearer in what this proposal is all about. Maybe that is what the feasibility study is going to do.

Nelson DeBettencourt, owner of a piece of land within this area. I've always thought someday I could have a little farms or something there when I got a little older and found where my actual bounds are. I'm against this. Another thing is that I think that Oak Bluffs is one of the smaller towns on the Island and we have enough of the free-stuff now and maybe some of the other towns should help carry the burden.

John Curelli, resident of School Village, which abuts this area. I am also in my 6th year as a School Committee member in Oak Bluffs. I think the intent of this meeting is a hearing on how residents of the Town feel about consideration of this area as a DCPC. My feeling are that this area is appropriate for concern and planning for the intents that Mr. Martin mentioned in his letter. I am not quite sure that I favor all of the usages that have been mentioned by the Planning Board and the Selectmen. I think that as one of the last Open Spaces in the Town it deserves very critical thinking and planning. That is the crucial word, planning, at this point. Whether it is used for public

buildings, waste treatment or whatever, the impact of these functions need really deep, appropriate study. I know that in the short 14-15 years that I have been here, it is one of the last few places that my family and I can walk safely without worrying about shotguns, target practice, and motorcycles. It is a wildlife area and in the past 5-6 years the number of deer that we see going through this area has greatly diminished. I'm sure people who have been here longer than I have been have seen changes in wildlife. Being on the School Committee I see another aspect that we have all seen the growth in the number of houses here. Two years ago we finished an addition to the school and area now at the point of having to add two more temporary trailers to provide space for additional classrooms. I think the town in general needs to plan for the uses of this property as well as growth in general. I think the efforts of a DCPC is worthy and necessary and I think that further on in the studies is when we come in to discuss and plan the actual uses for that property.

Jack Law, Member of the Board of Selectmen, wanted to make one point. In this designated area there will not be anything that is free. We realize everything is shared and comes into Oak Bluffs but nothing in this area will be free, no matter what it is, it will be taxed or whatever we can do but nothing will be free.

Ron Mechur, wants to speak as a resident of Oak Bluffs. I would like to bring a point to you that I thought about the other night and I think it is significant, and hope you think about it as you go through this process. Presently this land would be valued on a residential basis, R-60 zoning. Presumably we could get say 150 house lots if we eliminated the Brian Parcel. I think there is a danger in upzoning or intensifying land uses at this time. Mainly because there is an outstanding title matter. Currently there is a host of individuals who are claiming a part interest in a good portion of this property and until that is settled I don't think we really want to upzone the property. Because if we take the property down the road, those particular individuals are going to say the property is worth more because we have intensified the land use. Lets say the property is worth 3 or 4 millions at today's residential basis, what is it going to be worth when the Commission goes through this process with the town over the next year and then puts the Town to the muster to adopt the regulations and then after that the taking I presume will be based on this new land use package. Which may include commercial uses, it may include leases, it may include a septage handling facility or a host of other things. So I think it would behove use to find out what the answers are to some of these title matters and evaluations basis before we go ahead and end up with a real problem down the road.

Ms. Marinelli stated Mr. Brine, who had something to do with the donation of the 90 acres to Oak Bluffs, called from Florida today and said I could use his name and that he is totally opposed to this usage of this area and the uses that are being proposed.

When there were no further testimony from the public Mr. Early called on the Commissioners for any further statements.

Ms. Colebrook, Commissioner, stated she wants to go on record as objecting to the consideration of the inclusion of the so-called Brine Woodlot. I would like to refer to M.G.L. Chapter 40, Section 15.a. as it refers to conservation land. It states that municipalities can't use eminent domain procedures to divert land for another public use. Article 97 of the Constitution speaks to this doctrine of prior public use and there is earlier case law regarding the taking though eminent domain of conservation land. Finally I would like to remind everyone that we are all guaranteed though the Constitution the rights to clean air, open space and the natural qualities of the environment. So I would like to reiterate that I object to the inclusion of the 90 acres Brine woodlot.

Mr. Early then read a piece of correspondence received from Mr. Engle as follows: Dated: February 2, 1989, TO: MVC. This Island has been divided up into more house lots than the space can support people. Any remaining large parcels must be carefully planned for their uses relative to a potentially large population in the future. There will be a number of pressures for large scale operations in this 300 acres parcel. I particularly wish to speak for a center for civic oriented facilities in the area just north of the existing community services and skating rink. These should be ranged about a central common and designed in the spirit of the typical New England Town center. This area, remote from our present villages will lend itself to the locations of larger scale structures that would be out of place in our present town settings. Among facilities needed now or down the road are a larger court house, a modern theater/auditorium, expanded health and social services facilities and other facilities best located in a somewhat central locations.

When there was no further testimony Mr. Early closed the public hearing with the record remaining open for one week.

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After a short recess Mr. Early opened the Special Meeting of the Commission and proceeded with agenda items.

ITEM #1 - Chairman's Report

Some of the Commissioners may have heard in the last couple of weeks that due to the severe budget constraints of the Commonwealth of Massachusetts we might no longer be seeing our appointee Mr. McCavitt. As of today, that may not be the case. Mr. McCavitt spoke to the Secretary today and his termination is on hold until April sometime. We are all very hopeful that something will be worked out and he will again be joining us on a regular basis.

ITEM #2 - Old Business

Mr. Early stated there has been no response to date to our letter to the Oak Bluffs Building Official regarding the Captain's Table Diner and the Courtney Building on Circuit Avenue. Ms. Bryant, Commissioner, asked who received a carbon copy? Mr. Early responded

the Oak Bluffs Selectmen, the owners of the properties in question, the Board of Appeals and counsel. Ms. Bryant asked none of them responded? Mr. Early stated the letter was officially addressed to the Building Official. Mr. Wey, Commissioner, asked don't they have one more day? Mr. Early responded yes it was sent 2 weeks ago tomorrow and they have 14 days to respond under the general law.

ITEM #3 - Minutes of January 26, 1989.

It was motioned and seconded to approve the draft minutes as prepared. There was no discussion. The motion carried with a vote of 12 in favor, no opposition, 2 abstentions (Wey, Jason). (Harney was in favor.)

ITEM #4 - Committee Reports

Mr. Young, Chairman of the Land Use Planning Committee (LUPC), reported that they had met Monday with the applicant for Crocker/Millbrook subdivision in Chilmark and West Tisbury. We also had at the meeting representative from both towns planning boards. What ensued was a discussion of the Planning Boards and LUPC's goals for that area. The applicant arrived late and discussed his goals and what he felt he had to do there to realize some return on his investment. The meeting ended with the two planning boards agreeing to get together and draft some definite statement as to what they consider appropriate development and that the applicant again try to adapt his plans to what their wishes are. It was certainly clear to the Planning Board and LUPC members, and I hope it was clear to the applicant as well, that probably he will not in fact realize a profit on this subdivision. That he will either have to seek to minimize his losses by coming up with a plan that the towns can accept or else he is going to face opposition from the towns when this comes back before us. Next Monday's LUPC is going to be on the MSPCA modifications, the Regional Refuse District is going to meet with us to discuss the Temporary Solid Waste Transfer Facility, and the Edgartown Marine DRI will be before us.

ITEM #5 - Discussion - DRI Standards & Criteria Amendments

Mr. Early introduced Ms. Borer, Executive Director, to review the Standards & Criteria. Ms. Borer stated that the public hearing was held and closed on January 19 and the amendments to the Standards & Criteria are before us for discussion and possible adoption. You have an updated copy of the DRI Administrative checklist, an updated copy of the Standards & Criteria, and 2 pieces of correspondence received which she briefly reviewed as follows: Mr. Peters has a concern over lower the 30 acres threshold to 20 acres. His concern is that in the future we may decide to lower that threshold even further. He feels we should go back to the original 30 acres/4 lot which is from the 1985 checklist. He feels that 20 acres will penalize the landowners and will promote denser subdivision. He understands our revisions for the commercial proposals the only problem he has is that there was an exclusion for dwelling permits and he construed that to also mean special permits, variances, and orders of conditions on subsequent



dwelling in approved subdivisions. Mr. Dunkl's letter, if you recall he was at the public hearing and we asked him to submit something in writing. Apparently his concerns are that the term development should include all access to and from a public way with sufficient construction and capacity to safely handle the additional traffic that the proposed project will generate. Materials to be submitted for the Commission, he feels that there should be an addition for access roads which will service 10 or more lots. Those 2 issues were also raised to be included in the Standards & Criteria and a road in the Coastal District with access to be a beach was his concern.

Ms. Borer went on to say that regarding the Standards & Criteria and the checklist, since most of the Commissioners are very familiar with the checklist I will run through that. Again what you see underlined are changes from the 1987 checklist they also reflect changes since our public hearing based on testimony from the public hearing. She then reviewed these changes.

Mr. Early then opened the floor for discussion.

Mr. Evans, Commissioner, asked, since he wasn't at the public hearing, could the reasons for the change from 30 to 20 acres be explained to him? Ms. Borer stated that using the computerized land use inventory it was determined that there was a large number of parcels between the 20-30 acre threshold. The LUPC felt that that was significant enough to include it. Mr. Evans went on to say that Mr. Peter's letter expressed concerns that the Commission would be inundated with DRIs within this land limit and that this might overburden staff and Commission time. Does the staff feel there is any validity to this suggestions? Would we likely be getting a sudden surge of DRI applications? Mr. Adams, MVC Staff, stated that as it relates to burden on the developer and the MVC staff on lowering this threshold, what the Commission might consider in addition to the Standards & Criteria is a more detailed policy on how to review specific kinds of DRIs. Developing a more definitive review so there is more predictability and less time spent sorting out the issues. I did run a check on the number of subdivisions last year that would have fallen between the 20-30 acre limit, there were very few in the last year, I think it would have added 1 DRI.

Ms. Sibley, Commissioner, stated the comment was made that we treat all subdivision equally whether it is large or little which means that we sit here and listen to a long staff report, a public hearing, etc. Is there some way to streamline some of the obviously, non-controversial subdivision? Mr. Young, Chairman of LUPC, stated that we have done that. We have had DRIs that have come before us that are non-controversial and have gone through, some of them, remarkable swiftly. Ms. Sibley asked are they done on a sort of ad-hoc basis, the LUPC looks at it and identifies issues? Mr. Young stated yes, we will say there are very few issues to be identified and the staff notes will reflect this and hopefully there will be few very little discussion. Ms. Sibley stated that this answers the question of whether or not the Commission will be overburdened.

Mr. Early stated that every applicant has to be afforded the same opportunities, and the abutters, and the towns, the region has to be afforded the same opportunity to scrutinize the proposal. The ones that are not controversial, there will be no public in attendance, the Commissioners won't have much to say, and that is the streamlining. Some of the ones you don't think will be controversial turn out to be very controversial. We have tried over the past few years to streamline the hearing process, the committee process, but it is very difficult.

Mr. Filley, Commissioner, asked if 2 lots, 3 lots, 4 lots, can be considered of regional importance? In reading Mr. Peter's letter I get a negative tone of how people view coming to the Commission. Words like burden and asking for more than what you really want. I don't know whether or not that is the case but if it is would it maybe make sense for the Commission specify a certain number of lots would impact it more significantly. Maybe we would get more subdivisions of a smaller design.

Mr. Young stated that the dangers of that is incremental development. If that were the case it would be very easy for a 20 acres parcel owner to subdivide into 2 lots then further subdivide those 2 lots at some subsequent time into 2 lots each, etc. Mr. Filley stated that could be written into the regulation to guard against that. Ms. Borer stated that would still be within the 15 acres in 7 years.

Mr. Early stated that the Standards & Criteria can be amended at a future date. Mr. Evans said you mean if this didn't work? Ms. Borer stated we don't have to wait 2 year time period to amend it. We can do so anytime we so desire. I think the discussion of 30 to 20 acres probable should be asked of the LUPC members who have been working on it since August.

Mr. Young, Chairman of LUPC, stated that some of the rationale was that as the Island is built out and resulting from the boom of the last 5-10 years, elbow room has gotten tighter, facilities are being strained, governments are being pushed into insolvency in some cases, and what constitutes regional impact, I think it is very easy to justify a 20 acres subdivision now as constituting regional impact. Whereas 10 years ago, it would not have. I don't anticipate a tremendous, sudden surge of DRIs coming into the Commission. I think that the residential boom is leveling off somewhat. But I do think that 20 acre subdivisions, at this point in the Island's history, can very easily constitute regional impact.

Ms. Sibley did I understand Ms. Borer to say that in effect we can revise the Standards & Criteria at any point we feel necessary? Ms. Borer stated correct, after a public hearing. Ms. Sibley said in theory if something cropped up in 3 weeks we could make amendments? The response was yes.

Mr. Morgan, Commissioner, stated that Mr. Peter's letter seems to be concerned as this relates to perhaps neighbors trying to straighten out a property line. I don't see this as a problem. If a dispute of

property lines between neighbors comes before us and it is all on the up and up then it shouldn't take us very long to make a decision. He added that in the event that it might be as simple as straightening out a property line between neighbors, we probably ought to have a clause in our fee schedule that says that the Commissioners, by the vote of a majority, may waive the filing fee. There was further discussion among the Commissioners and the Executive Director regarding current and possible modifications to the fee waiver policies.

Ms. Borer stated for clarification no additional public hearing is needed to make revision to the draft checklist or Standards & Criteria. However if they are changed after they are adopted we will need another hearing. In addition changes to the provisions to waive filing fees would need a public hearing as they are contained in the Rules and Regulations not the Standards & Criteria.

Mr. Evans asked for discussion about number 4 and the addition of the word related and why that was included and how it might be used? Ms. Borer stated that since Mr. Peters letter the definition of the word related has been clarified because he has raised that issue. The definition of related is actually the creation of Eric Wodlinger and Don Connors. Mr. Evans asked if the lawyers are satisfied that the definition is clear enough? Mr. Borer responded yes, there has been lengthy discussion.

Mr. Filley stated that he wants to address the issue of number 6, more specifically focusing on the issues of commercial development within the business zone. We have looked at the possible vote on a DCPC for the business area and there is continuing concern over the business area within the thought that the business areas are the true economic importance for the Island. Some of the questions we come upon when we try to set a limit of 3,000 sq. ft. or 10,000 sq. ft. is that it becomes very difficult in some instance because a building of 5,000 sq. ft. might in some instances have less impact than one of 2,000 sq. ft. One of the things I am trying to strive for is a method that we can look at some of this potential development within the business district and say this is going to have a regional impact and it is under 2,000 sq. ft. or this is not going to have a regional impact and it is over 3,000. Whether it is accurate or not I don't know, but Mr. Peter's letter states that some people may see coming to the Commission as a burden and may stay under the limit to avoid coming to the Commission. This may not be in their best interest or ours. What I am trying to throw out is a method to review within the business district what will or will not constitute a regional impact and cause for use to review it as a DRI.

Ms. Borer stated she has discussed similar thoughts with Mr. Wodlinger and Mr. Connors and will read to you a proposal made to them and then tell you what their response was. This was proposed to them as a possible addition to Item #6 on the checklist: All building permit and change of use applications for new construction in commercial, business or light industrial zoning districts shall be referred to the M.V.C. prior to the issuance of permits for a determination if the

proposed construction is a DRI pursuant to Section 12 a-g of Chapter 831. I have been advised that if this were to be considered, basically what we are doing here is mixing DCPCs with DRIs. That this would come under a DCPC category not a Development of Regional Impact. That this is coming in the back door to get to a DCPC and it is advised not to do so. Mr. Filley asked if counsel has suggested any options? Ms. Borer responded to work with the towns again to see if they are interested in proposing DCPCs in the business districts.

Ms. Eber, Commissioner, stated recently there was a case that came before us today that wanted to build a 2 story building 850 ft. each and this was an auxiliary building which would be over 1,000 ft. and he would have to come to the Commission. When we informed him of that he changed his mind and knocked off the second story to keep it under this threshold. So there is an indirect effect. He kept it at 1 story.

Ms. Colebrook asked under 6.a. if states that the floor area and or area of use 3,000 sq. ft. or greater... does that include a basement? Ms. Borer stated this was discussed at the public hearing when we mentioned that now under 6.a. and 6.b. we have included the word storage and that we would be taking a look at the plans, and since we now require that every internal and external area on the plans be labelled, that we would look at the plan to see if that were usable space, whether it is the basement or the attic.

Mr. Early stated that also addressing Mr. Filley's point we have the all powerful #1 on this checklist. If something is perceived by a town to be a Development of Regional Impact and the town boards can convince the boards in another town that it is indeed a Development of Regional Impact, we have the mechanism of the cross-town referral. That can be applied to anything if it is truly regional.

Ms. Sibley stated that she still has concerns growing out of our discussion of mixed use. The notion of a structure in a commercial district that is both commercial and residential use and I wonder if the potential of a building adding a second floor defined as residential specifically to be keep under the limits for a DRI. My feeling is that if the building is of sufficient size in a commercial area that it should qualify as a DRI even if it is mixed use. Mr. Jason asked why. Ms. Sibley responded that if it is big enough to be a DRI as commercial use, then it is big enough to impact the commercial area. Mr. Jason asked how do you figure that the traffic problems would be the same under a different use? Ms. Sibley stated that the traffic isn't the only issues, generation of waster, sheer size, etc. should be looked at. As pointed out you could look at something very small, i.e. the Captain's Table, and realize that in it's particular context that has made a drastic change in that particular area. Perhaps because I believe that the way these properties are designed and the way they area utilized has a tremendous impact on the perception of the whole community. We are a tourist economy. We are selling our looks as it were. If our commercial districts aren't pleasing to the tourists they aren't going to come here. Mr. Jason asked then why would we stop at commercial

districts, why not look at residential units over 3,000 sq. ft.? Ms. Sibley responded that most of them aren't on the tourist route. They are not public the way the commercial districts are.

There was additional lengthy discussion among the Commissioners on these points and how best to remedy the problems now occurring with DRI referrals.

It was decided by consensus vote to change the threshold in Checklist Item 6a. and Standards & Criteria Item 3.301 from 3,000 sq. ft. to 1,000 sq. ft.

There was discussion initiated by Mr. Jason on the words "private recreational facility" as used in Items 6 a. & 6b. and that this would cover some things, i.e. tennis courts, that perhaps should be excluded. There was discussion on either adding the words "excluding tennis courts" or removing the words "private recreational or". It was agreed on a consensus vote to eliminate the words "private recreational or" from 6a., 6b. and the definition section of the Checklist and from 2.13 and 3.301 of the Standards & Criteria.

When there was no further discussion Mr. Early moved to the next item on the agenda.

ITEM #6 - Possible Vote - Adoption of DRI Standards & Criteria Amendments.

It was motioned and seconded that the Martha's Vineyard Commission adopt modified Amendments to the Standards & Criteria, pursuant to Section 12 of Chapter 831, determining whether or not a proposed development is one of regional impact and the conditions under which said DRI shall be referred to the Martha's Vineyard Commission for review; and adopt a new DRI Administrative Checklist determining whether a proposed development is one of regional impact including a fee structure for filing applications and materials to be submitted with applications. This motion carried with a unanimous vote. (Harney in favor).

ITEM #7 - New Business

Ms. Sibley, Commissioner, asked to address the Commission as the M.V.C.'s representative to the School Space Needs Committee. She has been asked by this committee to poll the commissioners concerning the following issue: The population of school children on the Island has increased rapidly, there have been additions to almost every school, and we are still facing a pressing need for additional space. The question is whether we should continue to build additions to existing town elementary schools or whether we should look at creating a Regional Middle School for the Island. There are both educational and structural implications to be considered. I ask you to give this some thought, talk to your constituents and jot down some views and/or suggestions and submit them to me. Thank you.

Ms. Borer, Executive Director, stated she has some new business she wants to discuss with the Commissioners. This morning I had Julie Wells from the Gazette come in and meet with me to discuss my financial disclosure during the MVY project. She raised a lot of questions and issues with me. That, in her opinion, the public is concerned because I happen to own a particular piece of property in the area of this project. She also asked specific questions like "how could an executive director own real estate?". Pretty much stating that applicants are doing business out of our office. Also that there are various people coming to the Gazette, whether they are public or town boards, and questioning my impropriety during this whole particular project. Accusing me of influencing Commissioners during the voting and deliberations of the decisions on this matter. I thought that I set the record straight with her however, I would like to inform you that if appears tomorrow there will probable be something in the newspaper. Following my discussion with her, I happened to have lunch with a Commissioner, James Young, the appointment had been set up previously. After the niceties of how the weather was he happened to ask how my meeting went with Julie Wells. I was frankly quite surprised and stated word must travel very fast in such a small community. He proceeded to tell me that he has been meeting with the press for at least a couple of weeks discussing such a matter. Quite frankly I felt hurt and offended. I honestly feel that I am an ethical person and that I have conducted you through this in a very ethical manner and that I do not deserve such treatment. He proceeded to ask me the same specific questions and raise the same specific issues that Julie Wells raised. I want to know if any of you other Commissioners have a problem with my financial disclosure, which by the way has been cleared by Choate, Hall & Stewart, my own personal council, and my papers have been on record for a long time in the Commission office. It lists property and every single bank account I have on this Island. If someone else has a problem let's hear it right now and I want it fully discussed because I am really getting tired of being accused of working with certain people and having a conflict.

Mr. Young, Commissioner, stated he wanted to tell the Commissioners exactly what I told Ms. Borer when I had lunch with her. Which was that during the course of the MVY Realty Trust DRIs, I was told by a member of the public that the Gazette was starting a file on Carol Borer concerning certain improprieties that they alleged, that somebody alleged, against her. It was news to me, I knew nothing about it at the time I was told and I didn't follow it up. I figured that if it was happening it would come out in the public and we would deal with it then. Nothing more was heard about it until, I would say, about 2 weeks ago when I was told that this file was nearing completion and that the story would probably be published. At that point, I know Julie Wells from years ago and I also know that Woody Filley knows Julie and Peter McKray quite well. Woody being on the executive committee, I discussed with him over coffee one Sunday the likelihood that such an article would be published. He and I both agreed that it was not in the best interest of the Commission to see such a thing come into a public forum. If the Commissioners had a problem with the way Carol performed during that DRI it should be an in-house discussion and should probably be brought up under the

executive committee. He and I both agreed to talk directly to Julie Wells about it, which I did. I called Julie Wells last week and told her that she and the newspaper should think very hard about whether or not the article they were proposing to publish was in fact in the best interests of the Commission. That she should make sure that her ducks were in a row. That if they were not in a row, there could be serious repercussions on this Commission and within the community. The MVY Realty Trust DRI was extremely divisive for the Island community and extremely divisive for the Commission. As I told Carol this afternoon at lunch, and she agreed with me, the kinds of battlelines that were drawn around this table during the MVY Realty Trust DRI are neither productive nor are they pleasant for us to deal with. I was not party to this article at all. Certainly the discussion we had throughout was courteous and agreeable between the both of us. I thought that we both agreed what we should work for is the interests of the Commission. The only other discussion that I had with the press was that Julie Wells called me up last night to tell me that she was going to talk to Carol this morning about the article. Those are the only two times I had anything to do with the press. I did not discuss this article at all other than those two occasions. I certainly don't know what slant this article is going to take. It maybe that the public regards it as a non-issue. Again, as I told Carol over lunch, it may not amount to anything in the eyes of the public. If it does I think it is incumbent on this Commission to discuss how to respond to it and incumbent on this Commission to discuss with Carol what the allegations are. But Carol, I am in turn surprised that you would accuse me of compliance in this. I thought I made it clear that this is not the case.

Mr. Morgan, Commissioner, stated that we had better drop this right now because it is going to be a bucket of worms like no one has ever seen before. Because I was one of the strongest opponents of MVY Trust and I wasn't influenced for one second by anyone on this Commission or anyone off of this Commission. As far as the divisiveness is concerned I will make a statement here, I threw the towel in after I lost, and wanted to be friends with the other side. I would say the other side has been more divisiveness and hasn't gotten over the fact yet, even though they won. I think this is going to open a bucket of worms between personalities and who did what and who is part of Citizens for a Liveable Island (CLI) and who is part of Vineyard Conservation Society (VCS), who was informing CLI and VCS members while it was going on as members of the Martha's Vineyard Commission. The whole thing stunk. I think we ought to stop it right now.

Mr. Early, Chairman, stated he thought we had stopped it. I thought this was behind us. I am very, very disappointed. I have totally lost respect for this publications if this is what they are doing at this point. It is totally irresponsible as far as I'm concerned.

Mr. Morgan asked if anyone here could say that they were influenced by the executive director, one way or the other?

Mr. Jason, Commissioner, stated that first of all the question is silly. I don't think the Executive Director influences anybody. What is more important, did they share with you any information on who else they have files on? Mr. Young stated no, in fact they didn't share that information, it came from a member of the public, initially and the second time. Mr. Jason stated you were told that the Gazette was keeping a file on Carol Borer. My question is are they keeping a file on anyone else here? Mr. Young responded no, not to my knowledge.

Ms. Colebrook, Commissioner, stated that she agreed with Bob Morgan. I have the distinction of not knowing personally anyone here and not being involved with the Martha's Vineyard Commission at that time. But I too heard, before I ever came on board, similar stories and not from a sole in this room. I think that the redirection of the pointed finger at Jim Young is unfair and I think that we are setting up a division amongst ourselves. I agree with Bob, that whatever takes place, this should be dropped.

Ms. Borer stated that she is not presenting this to the Commissioners to point fingers. I am presenting this because I feel a very strong allegiance to my Commissioners and I feel that I owe it to the Commissioners, before it comes out in the newspaper tomorrow, to at least let them know that the possibility exists that something is going to come out.

Ms. Harney, Commissioner, stated that she feels we have got to be able to let the Gazette know the damage they are doing.

Mr. Young stated that he thinks that allegations against Carol should have been made to this Commission and that this Commission should have dealt with them in an executive session, in-house. It is an in-house issue as this point, if there was an actual conflict of interest then it becomes a public issue.

Ms. Bryant, Commissioner, said I'm new but I want to know what the role of the Chair is. I hear this conversation from Carol, and I see the Chair as the person that we look to, and I'm looking at you John (Early) like you have heard this for the first time. I guess if I had know something like this the first person I would have gone to would have been Carol or the Chair. It bothers me that our Chairperson, who is there for a reason, is hearing this for the first time.

Mr. Young stated that he frankly didn't know this article was going to come out as soon as it did. I heard a couple of weeks ago that the file was nearing completion, and at that time I decided it would be wise to talk to Julie Wells and see exactly what she was intending to accomplish.

Ms. Bryant asked you didn't feel it was necessary to talk to John or Carol, or anyone on the Commission? Mr. Young stated he talked to Carol today.



Ms. Borer stated that she and Mr. Young did have a discussion on November 2nd. He did come into my offices with his concerns about my financial disclosure. Our chairman was there and the papers were out and I thought at that particular time that it was a dead issue.

Mr. Early stated he was involved at that point and he thought it was a dead issue too. Mr. Young stated that was way back when I first heard about it.

Mr. Jason said you heard about it, you brought it to the Chair, and you thought it was resolved? Mr. Young said I discussed it with John and Carol and it was resolved in my mind. Mr. Jason stated he is trying to get the sequence of events here. Mr. Young stated that allegations were presented to me by a member of the public, I put them to John and Carol and was satisfied with the response. Then I heard that this file that the Gazette was compiling was being concluded and that there was the likelihood of an article in the newspaper about it. Mr. Jason asked and that is when you talked to Woody Filley? Mr. Young responded yes. Mr. Jason asked but you never once talked to the executive committee? Mr. Young stated that the question to Woody was whether we should have an executive committee meeting about it and we decided it was probable some months off, I decided anyway, that I should probable talk to Julie Wells to find out exactly what the story was.

Mr. Filley stated that after this discussion I went away for a week and that is why I wasn't able to follow up on this.

Mr. Young stated he personally didn't feel the immediacy of the issue.

Mr. Jason asked, someone is attacking the executive director of this body and you don't feel the urgency? Mr. Young stated that he felt an urgency when he first heard of it and he went to her then. When I heard about it again I didn't realize it was a matter of less than a week before the article was going to be published.

Ms. Colebrook stated that we are all talking about it and we don't yet know what the paper said.

Mr. Morgan stated that it would be interesting to know that I listened to everything that MVY said for a couple of years and one night, the night of the last meeting, Mr. Evans and Mr. Young were talking about this driveway in relation to the access road, and I said to Mr. Jason what is their conservation about? He replied that Carol, or Carol's husband, owns that building across the street. I never knew that until after the entire vote. So if anyone was informed or influenced by this, and I was one of the strongest opponents, I didn't know until I specifically asked the question. This is a very unfair accusation.

Mr. Evans, Commissioner, stated that we are suppose to be dealing with is planning not ownership. Who owns the building is irrelevant from a planning standpoint. What we are interested in is what the traffic problems might be, etc., etc. So what do I care who owns the building.

Mr. Wey, Commissioner, stated that he feels we have said enough on this matter tonight. We can go over and over this thing. I think we should just drop it.

Mr. Early thanked the Executive Director for bringing this to our attention. I think it is a very unfortunate situation. I am very disappointed with that particular journal.


It was motioned and seconded to give the Executive Director a vote of confidence. The motion carried on a unanimous vote. (Harney was in favor).

ITEM #8 - Correspondence - There was none.

The meeting was adjourned at 10:50 p.m.

ATTEST

  
John G. Early, Chairman      2/9/89  
Date

  
James Young,  
Clerk/Treasurer      2/13/89  
Date

Attendance:

Present: Bryant, Colebrook, Early, Eber, Evans, Ewing, Filley, Fischer, Jason, Lee, Morgan, Sibley, Wey, Young, Harney.

Absent: Medeiros, Scott, Delaney, McCavitt, Allen, Geller.